

CCRB INVESTIGATIVE RECOMMENDATION

Investigator: John Butler	Team: Squad #5	CCRB Case #: 201504513	<input checked="" type="checkbox"/> Force	<input checked="" type="checkbox"/> Discourt.	<input type="checkbox"/> U.S.
			<input checked="" type="checkbox"/> Abuse	<input checked="" type="checkbox"/> O.L.	<input checked="" type="checkbox"/> Injury
Incident Date(s) Friday, 05/29/2015 8:20 PM	Location of Incident: Glenwood Road and Flatbush Avenue	Precinct: 70	18 Mo. SOL 11/29/2016	EO SOL 11/29/2016	
Date/Time CV Reported Wed, 06/03/2015 4:40 PM	CV Reported At: CCRB	How CV Reported: In-person	Date/Time Received at CCRB Wed, 06/03/2015 4:40 PM		

Complainant/Victim	Type	Home Address

Subject Officer(s)	Shield	TaxID	Command
1. POM Jason Barish	30344	950047	070 PCT

Witness Officer(s)	Shield No	Tax No	Cmd Name
1. POM Vasilios Vasilopoulos	27386	955623	PBBS

Officer(s)	Allegation	Investigator Recommendation
A.POM Jason Barish	Discourtesy: PO Jason Barish spoke discourteously to § 87(2)(b)	
B.POM Jason Barish	Off. Language: PO Jason Barish made remarks to § 87(2)(b) based upon race.	
C.POM Jason Barish	Abuse: PO Jason Barish improperly issued a summons to § 87(2)(b)	
D.POM Jason Barish	Discourtesy: PO Jason Barish acted rudely toward § 87(2)(b)	
E.POM Jason Barish	Force: PO Jason Barish struck § 87(2)(b) with a car door.	

Case Summary

§ 87(2)(b) filed this complaint in-person with the CCRB on June 3, 2015.

§ 87(2)(g)

On May 29, 2015, at approximately 8:20 p.m., PO Jason Barish of the 70th Precinct and PO Vasilios Vasilopoulos of Patrol Borough Brooklyn South stopped § 87(2)(b) for failing to yield to pedestrian traffic as § 87(2)(b) drove his vehicle through the intersection of Glenwood Road and Flatbush Avenue in Brooklyn. PO Barish allegedly referred to § 87(2)(b) as an “idiot” multiple times (**Allegation A**). PO Barish also allegedly said, in substance, “I’m going to discipline this nigger” (**Allegation B**). PO Barish allegedly used the word “nigger” toward § 87(2)(b) two to three times (**Subsumed within Allegation B**). PO Barish issued § 87(2)(b) a summons for disorderly conduct for unreasonable noise (**Allegation C**). PO Barish also issued § 87(2)(b) summonses for failing to yield to pedestrian traffic and failing to comply with a police officer. When handing these summonses to § 87(2)(b) PO Barish allegedly spat in § 87(2)(b) s face (**Allegation D**) and slammed § 87(2)(b) s car door on his leg (**Allegation E**).

There is video footage of this incident, and the relevant 10:08 portion of the video is embedded below (See also BR 02). The full video is located in IA 32 (BR 03).



201504513_20160224_1029_DM.mp4

Mediation, Civil and Criminal Histories

§ 87(2)(b) accepted mediation but his complaint was investigated after the unsuccessful mediation § 87(2)(g). On February 24, 2016, a notice of claim request was submitted to the Comptroller’s Office, and it will be added to the case file upon its receipt at the agency. [§ 87(2)(b)] [§§ 86(1)(3)&(4)] [§ 87(2)(c)]

Civilian and Officer CCRB Histories

§ 87(2)(b) has filed three prior complaints with the CCRB, § 87(2)(b)

PO Barish has been a member of the NYPD for four years and has been the subject of two prior CCRB complaints that were truncated as complainant uncooperative.

PO Vasilopoulos has been a member of NYPD for two years and has been the subject of one prior CCRB complaint that was administratively closed.

Findings and Recommendations

Allegation A -Discourtesy: PO Jason Barish spoke discourteously to § 87(2)(b)

Allegation B – Offensive Language: PO Jason Barish made remarks to § 87(2)(b) based upon race.

§ 87(2)(b) was interviewed on June 4, 2015 (BR 01). PO Barish was interviewed on February 18, 2016 (BR 05). PO Vasilopoulos was interviewed on February 22, 2016 (BR 06).

Upon being stopped, § 87(2)(b) stated that PO Barish approached the driver’s side of his vehicle, and PO Vasilopoulos approached the passenger’s side of the vehicle. § 87(2)(b)

§ 87(2)(b) asked PO Barish to explain the reason for the stop, and PO Barish allegedly said, “Look at this idiot questioning my authority.” PO Barish then allegedly said, “I’m going to discipline this nigger” to PO Vasilopoulos. PO Barish allegedly also referred to § 87(2)(b) as a “nigger” two to three additional times in the same context as his initial comment. As § 87(2)(b) handed his license and registration to PO Barish, PO Barish allegedly said, “Look at this idiot.” The video footage does not have audio and does not capture PO Barish’s alleged comments.

PO Barish denied referring to § 87(2)(b) as an “idiot” or a “nigger” during the incident, and PO Vasilopoulos did not hear PO Barish make these comments.

§ 87(2)(g)

Allegation C – Abuse of Authority –PO Jason Barish improperly issued a summons to

§ 87(2)(b)

According to all parties, the officers returned to their police vehicle and entered their car after obtaining § 87(2)(b)’s license and registration. § 87(2)(b) stated that he remained in his vehicle with his car door locked while the officers wrote his summonses.

PO Barish stated that he only intended to write one summons for failing to yield to pedestrian traffic when he initially returned to his car. At that time, PO Barish and PO Vasilopoulos stated that § 87(2)(b) exited his vehicle and walked toward the officers’ car. § 87(2)(b) repeatedly told the officers to “arrest him” with a raised voice. The officers exited their vehicle and told § 87(2)(b) to re-enter his car multiple times. § 87(2)(b) re-entered his vehicle only after being told to do so multiple times. According to the officers, a crowd of three to five civilians gathered due to § 87(2)(b)’s behavior, and this crowd stood on the sidewalk approximately 15 feet away from the incident. The officers stated that the crowd did not interact with them or § 87(2)(b) and that § 87(2)(b) did not interact with the crowd. At that time, PO Barish decided to issue § 87(2)(b) a summons for disorderly conduct because he raised his voice toward the officers in a way that caused a crowd to gather. PO Barish also decided to issue § 87(2)(b) a summons for failure to comply with a police officer for initially refusing to re-enter his vehicle. The disorderly conduct summons and the officers’ memo books were consistent in describing § 87(2)(b)’s raised voice (BR 07-09).

The embedded video footage shows the officers and § 87(2)(b) inside of their respective vehicles <00:01 to 00:09>. It also shows two female civilians speaking with each other on the sidewalk near the incident location, and it shows one male civilian in a blue and white checked shirt standing near these two female civilians <00:01 to 00:09>. PO Barish viewed the video footage during his interview, and he identified these civilians as the members of the crowd that gathered due to § 87(2)(b)’s behavior. The video footage <00:08 to 00:18> appears to show § 87(2)(b) open his car door, and it shows the officers exit their vehicle at the same time. The crowd appears to look toward the incident during this period of time.

The video footage is inconsistent with the officers’ testimonies in that it does not show § 87(2)(b) exit his vehicle. At most, the video footage appears only to show § 87(2)(b) lean out of his car, and it does not show § 87(2)(b) walk toward the officers as claimed by the officers. The video footage shows that only the officers exited their vehicle at this time.

A person is guilty of disorderly conduct when, with intent to cause public inconvenience, annoyance or alarm, or recklessly creating a risk thereof, he makes unreasonable noise (BR 10). PL § 240.20 (2). A violation of disorderly conduct can only occur once the interaction extends beyond the original disputants to a point where it becomes a potential or immediate public problem (BR 11-12). People v. Gonzalez, 2015 NY Slip Op 05515; People v. Baker, 2013 NY

Slip Op 782. The mere expression that one feels aggrieved by the police – even when uttered in a loud voice – cannot constitute an offense. People v. Square, 2008 NY Slip Op 51632U.

§ 87(2)(g)

Allegation D – Discourtesy: PO Jason Barish acted rudely toward § 87(2)(b)

Allegation E – Force: PO Jason Barish struck § 87(2)(b) **with a car door.**

§ 87(2)(b) stated that he opened his door a few inches when PO Barish returned to his car. PO Barish slipped § 87(2)(b)'s summonses through the crack in the top of the door, and § 87(2)(b) retrieved them from his hand. At that time, PO Barish allegedly spat on § 87(2)(b)'s face through the open door and pushed § 87(2)(b)'s car door shut, causing it to strike § 87(2)(b)'s left knee. The officers then left the scene.

PO Barish acknowledged that § 87(2)(b) opened his car door slightly when the officers returned to the car. PO Barish stated that he told § 87(2)(b) to remain inside the car, and he then pushed the car door closed. PO Barish stated that the car door did not make contact with § 87(2)(b)'s knee. PO Vasilopoulos did not recall this interaction. PO Barish denied spitting on § 87(2)(b) and PO Vasilopoulos did not see PO Barish take this action.

The video footage does not clearly show whether or not PO Barish took any of the actions alleged by § 87(2)(b) <09:32 to 09:57>.

§ 87(2)(g)

Squad: 5

Investigator: _____
Signature Print Date

Squad Leader: _____
Title/Signature Print Date

Reviewer: _____
Title/Signature Print Date